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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,597	01/04/2002	Neal W. Luginbill	HRA-12807	6360
27505	7590	01/05/2006		EXAMINER
RANKIN, HILL, PORTER & CLARK LLP				HONG, HARRY S
4080 ERIE STREET				
WILLOUGHBY, OH 44094-7836			ART UNIT	PAPER NUMBER
				2642

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/037,597	LUGINBILL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Harry S. Hong	2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                          |                                                                             |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                              | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .                                              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                          | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn (US 6,543,637 B1; previously cited and applied) in view of Close (US 6,396,925 cited and applied for the first time).

Regarding claim 1, Osborn shows a cup holder comprising:

An open topped outer member (12) that is secured to a support (col. 3, lines 38 - 62);  
an open topped inner member (14) that is slidably received and secured to the outer  
member (12);  
the outer member (12) is adapted to receive a cup having a first size when the inner  
member is removed; and  
the inner member (14) is adapted to receive a cup having a second size.

The front walls of the inner and outer members have an elongated opening through  
which a front of the cup is visible (clearly depicted in FIG. 1).

Osborn does not teach holding a phone. However, Close plainly teaches that  
cup holders are and can be adapted to be used with phones. Therefore, it would have  
been obvious even to one ordinary skill in the art at the time of the invention to modify  
the cup holders of Osborn to also hold phones as clearly taught and motivated by  
Close.

5. Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over  
Osborn in view of Close as applied to claim 1 above, and further in view of Hecht et al.  
(Hecht; 5,848,820; cited and applied for the first time).

Osborn in view of Close differs from the claimed invention in that it does not  
explicitly mention a panel assembly pivotally movable between a closed position and an  
open position wherein the panel is disposed "generally" vertically in the closed position.  
However, Hecht plainly shows such a panel assembly (Figs. 2 and 3) that is pivotally  
movable between a closed position (Fig. 2) and an open position (Fig. 3), wherein the  
panel is disposed "generally" vertically in the closed position. Hence, it would have

been obvious for one of ordinary skill in the art to incorporate Osborn in view of Close into a pivotal panel as taught by Hecht, such that the modification allows the system to be stored in a storage bin when not in use.

Regarding claims 3-6 and 8-14, the combination of Osborn in view of Close or Osborn in view of Close and further in view of Hecht shows:

the inner and outer members having an opening on the bottom wall (see Figs. 5 and 6 of Close);

the inner member can have ears that are snap fit through openings in the outer member (see FIG. 1 of Osborn);

ribs, slots, and mounting tabs (see 50, 52, 54, 56, 22, 25, 24, 26, 28, and 30 in FIG. 1 of Osborn); and

the upper peripheral rims for the inner and outer members (see opening top in FIG. 1 of Osborn).

Since these new grounds of rejection are obviousness rejections, the applicants are respectfully reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

***Response to Arguments***

6. Applicant's arguments with respect to claims 1 and 3-14 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry S. Hong whose telephone number is (571) 272-7485. The examiner is normally off on Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad F. Matar can be reached on (571) 272-4788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Harry S. Hong*  
Harry S. Hong  
Primary Examiner  
Art Unit 2642

January 3, 2006